

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-149

In the Matter of)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272)
of the Communications Act of 1934,)
as amended; and)
Regulatory Treatment of LEC Provision)
of Interexchange Services Originating)
in the LEC's Local Exchange)

INITIAL COMMENTS OF
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

CHARLES D. GRAY
General Counsel

JAMES BRADFORD RAMSAY
Assistant General Counsel

National Association of
Regulatory Utility Commissioners

1201 Constitution Avenue
Suite 1102
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

August 15, 1996

No. of Copies rec'd
List ABCDE

0213

In the Matter of
Implementation of the Non-Accounting Safeguards of Sections 271 and 272
of the Communications Act of 1934, as amended;
and
Regulatory Treatment of LEC Provision of Interexchange Services Originating
in the LEC's Local Exchange Area

CC Docket No. 96-149

EXECUTIVE SUMMARY

NARUC believes that Federal-State cooperation is essential to ensure that federal and state policies work in concert to bring the benefits of competition to all markets and subscribers. These comments outline NARUC's suggestions for achieving the federal and state balance needed to expedite realization of Congress' goals within the context of this docket. Specifically, NARUC suggests the following -

- o Some of the NPRM tentative conclusions will impede, not promote the swift transition to a more competitive environment sought by the Act. Specifically, the proposal to preempt "some or all non-accounting" State safeguards is, at best, premature.
- o The FCC's §§271-2 authority does not supersede State generic intrastate jurisdiction. The '96 Act clearly preserves State authority under § 152(b). National policies must be crafted which recognize that clear Congressional grant of authority to the States. The FCC's conclusions aside, by its own terms, § 152(b) applies to all of Part II of Title II, including § 271, and § 272.
- o Moreover, application of § 152(b) & § 601, inter alia, requires a narrow reading of the FCC's authority under § 271 and § 272 to promulgate preemptive rules.

NARUC looks forward to continuing cooperative efforts to implement the 1996 Act. There are issues raised by the NPRM that should be the focus of additional Federal-State discussions. In the interim, the States will continue to move forward to implement pro-competitive goals of the Act. Continued discussions on issues of mutual concern will facilitate these efforts.

In the Matter of
Implementation of the Non-Accounting Safeguards of Sections 271 and 272
of the Communications Act of 1934, as amended;
and
Regulatory Treatment of LEC Provision of Interexchange Services Originating
in the LEC's Local Exchange Area
CC Docket No. 96-149

TABLE OF CONTENTS

Executive Summary	i
I. INTRODUCTION	2
II. COMMENTS	3
A. The proposal to preempt "some or all non-accounting" State safeguards is premature	3
B. The FCC's §§271-2 authority does not supersede State generic intrastate jurisdiction	5
III. CONCLUSION	7
APPENDIX - NARUC RESOLUTIONS	9

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of
Implementation of the Non-Accounting
Safeguards of Sections 271 and 272
of the Communications Act of 1934,
as amended; and
Regulatory Treatment of LEC Provision
of Interexchange Services Originating
in the LEC's Local Exchange

CC Docket No. 96-149

**INITIAL COMMENTS OF
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1995), the National Association of Regulatory Utility Commissioners ("NARUC")¹ files these comments addressing the "Notice of Proposed Rulemaking" ("*NPRM*") adopted in the above-captioned proceeding July 17, 1996 [FCC 96-308].

¹ NARUC is a quasi-governmental nonprofit organization founded in 1889 to, inter alia, improve the quality and effectiveness of public utility regulation. Members include the commissions from all States, the District of Columbia, Puerto Rico, and the Virgin Islands, that regulate, inter alia, intrastate telecommunications services. NARUC also (i) nominates state members to the 47 U.S.C. § 410 mandated Federal-State Joint Boards, (ii) actively represents State interests in FCC dockets that impact state regulatory initiatives, and (iii) collaborates with the FCC Common Carrier Bureau in matters of common interest. [47 C.F.R. § 0.91(c) states the CCB is to "[c]ollaborate with..state [PUCs].. and [NARUC] in...studies of common carrier and related matters."

I. INTRODUCTION

Passage of the "Telecommunications Act of 1996" ("Act" or "'96 Act"),² the first comprehensive reform of federal communications law in over 60 years, was a landmark event. This legislation establishes a framework for Federal and State cooperation to facilitate the transition to competition throughout the communications industry.

The Act permits the BOCs to provide in-region interLATA services upon compliance with the requirements of new § 271. This NPRM considers rules to implement the non-accounting separate affiliate and nondiscrimination safeguards prescribed in new § 272 concerning the BOCs' provision of interLATA services originating in states in which they provide local exchange and exchange access services, interLATA information services, and BOC manufacturing activities. Aside from the instant proceeding, the FCC has also issued another rulemaking to specifically address accounting safeguards in Docket No. 96-150.

NARUC's primary focus remains protecting consumers while facilitating the transition to competition. We continue to believe that Federal-State cooperation is essential to ensure that federal and state policies work in concert to bring the benefits of competition to all markets and subscribers. In this proceeding, the FCC has proposed an overbroad scope for its jurisdiction under § 271-2 and unnecessary preemption of related State regulations. In these comments, NARUC presents its views for achieving the federal and state balance needed to expedite realization of Congress' goals in the context of § 271-2.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.) (All citations to the 1996 Act will be to the 1996 Act as it will be codified in the United States Code.) The 1996 Act amended the Communications Act of 1934 (Communications Act).

II. BACKGROUND

The Act clearly defines roles for both Federal and State regulators explicitly based on the fundamental division of authority enunciated in § 152(b). This new framework reflects Congress' decision to leave direct oversight of intrastate markets to the States as the most expedient way to both assure the development of genuine intrastate competition and ensure consumers are protected. However, the NPRM proposes in ¶ 21 that its "rules implementing these sections [§ 271-2] apply to both interstate and intrastate services." In ¶ 26, the FCC further argues that

"[§] 2(b)...does not require a contrary result. Section 2(b) provides that, except as provided in certain enumerated sections not including [§§] 271 and 272, 'nothing in [the Communications Act] shall be construed to apply or to give the Commission jurisdiction with respect to...charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier.' [note omitted] In enacting [§§] 271 and 272 after section 2(b) and squarely addressing therein the issues before us, we tentatively conclude that Congress intended for [§§] 271 and 272 to take precedence over any contrary implications based on [§] 2(b)."

In ¶ 28, the FCC "also seek[s] comment on the extent to which the Commission may have authority to preempt state regulation with respect to some or all of the non-accounting matters addressed by [§§] 271 and 272."

For the reasons discussed, infra, NARUC believes that the FCC's § 271-2 authority to reach intrastate matters must be narrowly construed. We disagree with the ¶ 21 tentative conclusion that the FCC's § 271-2 rules promulgated will apply to both intrastate and interstate services. The suggested preemption is premature. At a *minimum*, States should have authority to prescribe accounting and non-accounting safeguards in addition to those established by the FCC. During this transition period and beyond, State specific cross-subsidy or competitive concerns that do not lend themselves to a nationally prescribed solution are bound to arise.

III. COMMENTS

A. The proposal to preempt "some or all non-accounting" State safeguards is premature.

As discussed below, NARUC believes the FCC's authority under § 271-2 must be narrowly construed. However, even if one concedes, arguendo, that the FCC has unlimited authority over BOC provision of intrastate interLATA traffic, the proposal to preempt corresponding or complementary State regulation is, at best, premature. The NPRM contains no description or even allegations concerning any *specific* State's regulation that is inconsistent with the proposed FCC rules. For example, in ¶ 29 the FCC cites a pre-enactment case, the *People of the State of California v. FCC*, 39 F.3d 919, 932-33 (1994), as support for preemption of possible state efforts to "try to impose separate affiliate or nondiscrimination requirements on the intrastate portion of jurisdictionally mixed services that are inconsistent with the requirements in section 272." However, until a particular State actually promulgates rules directed to § 271 issues that affect jurisdictionally mixed services, it is not possible to determine if State rules are inconsistent with the Act's goals.

Moreover, even with a specific enumeration of the *types* of State rules proposed to be preempted, until the FCC determines what its final rules will be, it is difficult to assess if or how such rules could "thwart" the Act's goals. A good example is raised by the FCC's inquiry in ¶ 88. There the FCC queries what enforcement mechanism should be applied in relation to the § 272(e)(3) imputation requirements and seeks "comment on what additional regulations, if any, are necessary to implement this statutory provision."³ Currently, in Wisconsin, an

³ Section 272(e)(3) provides that a BOC and an affiliate that is subject to the requirements of § 251(c) "shall charge [a section 272(a) affiliate], or impute to itself (if

imputation test must be passed by all affiliates subject to Wisconsin's 196.204 Stats. Under the Wisconsin rule, the prices of an affiliate's goods and services can not be less than the access charges and the TELRIC of all other components used in providing the service offering.⁴ The FCC cannot assess the impact of the Wisconsin requirement on the Act's goals until it finally determines "what additional regulations, if any" are needed to implement § 272(e)(3). NARUC respectfully suggests that, in any case, the Wisconsin rules, and its analogs in other States, would promote, not retard or "thwart", the goals articulated in § 272.

B. The FCC's §§271-2 authority does not supersede State generic intrastate jurisdiction.

Because §§271 and 272 "were intended to replace the MFJ as to both interstate and intrastate interLATA services and interLATA information services," the FCC tentatively concludes in ¶ 21 that its implementing rules apply to intrastate, as well as interstate services. It further concludes in ¶ 26 that since §§271-2 was enacted after §152(b), that Congress intended §§271 and 272 "to take precedence over any contrary implications based on section 2(b)."

using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carrier for such services." The NPRM tentatively concludes that a BOCs' provision of telephone exchange and exchange access services under tariffed rates, including their affiliates' purchase at these rates pursuant to tariff or imputation of these rates to the BOCs, is sufficient to implement this provision.

⁴ This seems to be an area clearly outside the scope of FCC authority insofar as it deals within intrastate interLATA pricing, which the State can police without interfering with interstate interLATA pricing.

This interpretation ignores both the history of the MFJ and the dictates and structure of the revised Communications Act. While the MFJ was in effect, the States still had jurisdiction over all the intrastate operations of companies that were not prohibited by the MFJ. MFJ restrictions on State authority were limited. Basically, States could authorize interLATA service, e.g., EAS arrangements, limited toll services, but the BOC involved also had to get the MFJ court's approval of the State's authorization. There was no additional restriction of State jurisdiction over BOC provision of intrastate traffic, and where allowed, intrastate interLATA traffic. Congress, in the '96 Act did not enhance those restrictions on State authority. Indeed, the legislative history and specific provisions of the Act suggest just the opposite.

For example, under the MFJ, the States had no "specified" role in the narrow question of BOC in-region interLATA entry. The Telecommunications Act of 1996 changed that. Now § 271(d)(2)(B) requires the FCC to consult with State commissions before authorizing BOC interLATA in-region services. Indeed, the text of the Act makes clear that ensuring compliance with § 271-2 is the responsibility of both federal and state regulators. The Act itself stresses joint federal and State efforts in a number of places, e.g., the §271(c)(1)(A)&(B)/(d)(3)(A) requirements for a State sanction of interconnection agreements, the §271(d)(2)(B) requirement to consult with State commissions before authorizing BOC interLATA in-region services, and the §272(d)(1) specified joint audits. Section 272(d)(3) also gives the States full access to information necessary for the regulation of rates as well as to working papers, and full access to all supporting materials of the auditor that performs the audit. Indeed, FCC Chairman Reed Hundt has recognized the need for coordinated action and suggested a closed FCC-State forum to discuss collaborative enforcement of these sections.

Moreover, changes to the Act suggest that FCC authority granted under § 271-2, insofar as it addresses intrastate matters, must be narrowly construed. In both the House and Senate pre-conference versions of the bills which became the 1996 Act, § 152(b) was amended to exempt various sections of Title II, including the sections which correspond to what are now §§ 271 and 272. Those exemptions were later removed at the direct and pointed request of numerous State commission and NARUC. Notwithstanding the FCC's explanation, supra, the Congress made a deliberate decision to make § 152(b) applicable to, inter alia, §§ 271-2. Additionally, §601(c)(1) of the 1996 Act states "[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments."

Both Section 271 and 272 are silent on the jurisdictional division of responsibilities. In the absence of a direct directive to establish rules applicable to intrastate interLATA service, both § 152(b) and § 601(c)(1), by their own terms, assure that States retain jurisdiction over intrastate matters.

IV. CONCLUSION

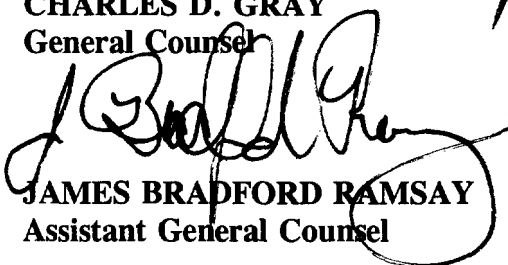
As the attached resolutions re: § 271-2 attest, NARUC looks forward to continuing cooperative efforts to implement the 1996 Act. As FCC Chairman Hundt has suggested, there are a number of issues raised by this NPRM concerning, e.g., enforcement that should be the focus of additional Federal-State discussions.

In the interim, for the foregoing reasons, NARUC respectfully requests that the FCC incorporate the positions outlined, supra, in the final rule issued in this proceeding.

Respectfully submitted,



CHARLES D. GRAY
General Counsel



JAMES BRADFORD RAMSAY
Assistant General Counsel

**National Association of
Regulatory Utility Commissioners**

**1201 Constitution Avenue, Suite 1102
Post Office Box 684
Washington, D.C. 20044**

(202) 898-2200

May 16, 1996

**Resolution to Endorse Coordinated Implementation of
Section 271 Responsibilities of the Telecommunications Act of 1996
Among the FCC, DOJ and the States**

WHEREAS, State regulatory commissions, the Federal Communications Commission (FCC) and the Department of Justice (DOJ) are vested with the responsibility to effectuate the provisions of Section 271 of the Telecommunications Act of 1996 (the Act), which prescribes a 90 day time frame for disposition of applications of Regional Bell Operating Companies (RBOCs) to enter the in-region interLATA market; and

WHEREAS, Although the Act gives a role to state regulatory commissions under Section 271 of the Act, the Act is silent on the significance that will be attributed to the findings and recommendations of state commissions; and

WHEREAS, Many states have begun to investigate and research how to best implement their consultative responsibilities provided for in Section 271; and

WHEREAS, The Staffs of the state regulatory commissions, the FCC and the DOJ have been cooperating on a national level, to efficiently and effectively coordinate their Section 271 responsibilities, via regular meetings and discussions, during which the states have been urged to undertake comprehensive factual review and analysis in fulfilling their consultative responsibilities; and

WHEREAS, The ongoing dialogue among the staffs of the states, FCC and DOJ has yielded a consensus recognition that proactive measures prior to and in anticipation of the filing of applications may be a constructive and efficient approach for undertaking the respective evaluations required under Section 271; and

WHEREAS, Such measures may include the development of a suggested but not binding procedural framework for the states' use in fulfilling their consultative responsibilities comprised of the initiation of a request to each RBOC to provide notice at least 60 days in advance of its anticipated filing of a Section 271 application with the FCC, and state fact-finding proceedings in advance of the filing of RBOC applications to evaluate compliance with the Section 271 competitive checklist; and

WHEREAS, The Staffs of the states, FCC and DOJ have discussed the importance of the state consultative role, the need for company cooperation and a suggested procedural framework for the RBOCs and states to use; now, therefore, be it

RESOLVED, The National Association of Regulatory Utility Commissioners (NARUC), convened at its 1996 Summer Meeting in Los Angeles, California, endorses the continued dialogue among the Staffs of the states, FCC and DOJ to coordinate the efficient and effective implementation of Section 271 responsibilities; and be it further

RESOLVED, NARUC endorses mechanisms which convey the importance of the states' consultative role, encourages company cooperation and transmits the suggested procedural framework for the RBOCs' and states' use; and be it further

RESOLVED, that in the interest of cooperative federalism and upon the State Commission's performing its investigation of the requirements of Section 271(c) of the Act, the FCC should give substantial consideration to the State's verifying compliance based on adequate findings of fact and conclusions unless such findings and conclusions are clearly inconsistent with the Act.

**Resolution to Support the Attached Audit Guidelines and
Analysis to Comply with the Current Federal Legislation
to Prevent Cross Subsidization**

WHEREAS, The Federal Communications Commission (FCC) and the National Association of Regulatory Utility Commissioners (NARUC) have participated in successful joint audits; and

WHEREAS, The FCC and State staffs have benefited from the joint audits and developed professional expertise that has been shared among the regulatory staff nationally, and high quality guidelines for past audits have been developed; and

WHEREAS, The "Telecommunications Act of 1996" (this Act) will require new audit guidelines and a joint audit approach to the implementation of this Act would be an economical and efficient means to achieve the intent of this Act; and

WHEREAS, This Act requires that the Bell Operating Companies pay for biennial joint Federal/State audits by independent auditors to ensure that the companies meet the separate affiliate requirements of Section 272 and that those audits be made available to the FCC and appropriate state commissions; and

WHEREAS, The Executive Committee of NARUC, convened at its 1996 Winter Meeting in Washington, D.C., authorized the Subcommittees on Communications and Accounts to perform or cause to perform, joint audits with the FCC in a comprehensive manner in the areas of cost of current regulated services, the cost of spare capacity and the transfer of resources to the new non-regulated services and also work cooperatively to ensure that the audits are performed in compliance with Section 272 of the Act; and

WHEREAS, On February 28, 1996, The NARUC Executive Committee adopted a resolution, jointly sponsored by the Committees on Communications and Finance and Technology, which stated that in keeping with the spirit of cooperation set forth in the NARUC Executive Committee Resolutions adopted 2-28-90 and 11-13-91 regarding joint or coordinated FCC and State Audits and the potential benefits derived from such audits, the Subcommittees were directed to invite and work with the FCC staff to prepare uniform joint audit guidelines under the "Telecommunications Act of 1996, to be presented as a proposal to the respective parent committees at the NARUC Summer meetings in Los Angeles, California; and

WHEREAS, The Staff Subcommittees on Communications and Accounts, through the Federal/State RBOC Joint Audit Oversight Committee, have developed audit guidelines; now, therefore be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1996 Summer Meeting in Los Angeles, California, adopts the attached audit guidelines and analysis regarding the implementation of Section 272 of the Telecommunications Act of 1996 as prepared by the state members of the Joint Federal/State RBOC Staff Audit Oversight Committee; and, be it further

RESOLVED, That a separate joint federal/state audit team, consisting of staff members from federal and state regulatory commissions, should be set up, consistent with state and federal law, to monitor and oversee the audit processes required by the Telecommunications Act of 1996, especially compliance with Section 272 of the Act.

I. INTRODUCTION

Under a Resolution sponsored jointly by the Committees on Communications and Finance and Technology and adopted on February 28, 1996, the Subcommittee on Communications and the Subcommittee on Accounts were directed to invite and work with the Federal Communications Commission (FCC) and staff to prepare uniform joint audit guidelines under the "Telecommunications Act of 1996." In this document, we are seeking to carry out our directive and clarify and present our interpretation of several points throughout Section 272. Separate Affiliate; Safeguards while attempting to outline the role of the State commissions and the FCC in the audit process. In Section 272(d)(1), it is stated that "a company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit...". In addition, there are several specific guidelines, requirements and responsibilities included in the Section. Our goal here is to address the most appropriate and efficient execution of those guidelines and responsibilities.

II. FEDERAL AND STATE ROLE

First, we believe a separate joint Federal/State audit team (the Team) should be set up to monitor and oversee the audit process. A team consisting of Federal and State regulators should be formed to oversee and monitor the audit process as it relates to compliance with Section 272. The Team members should be appointed by the NARUC Subcommittee on Communications and the Subcommittee on Accounts. In many instances in the text of Section 272, State and Federal action is mentioned. Where possible, the Team should have the responsibility of completing those actions.

The Team should have access to a staff of auditors who will be assigned to the audits and who will be directly responsible for monitoring the steps in the audit process. The Team audit staff should consist of members of Federal and State regulatory commissions. The State commissions in which a particular company operates would have the first opportunity to volunteer members of their staff to serve on the Team audit staff. All States should have the right to join the team or participate on an individual State basis. An alternative would be to establish a joint board for this purpose.

The Team should not be a party to the contract between the company and the auditor. The Section stated that the audit should be obtained and paid for by the company. Therefore, only the company and the auditor should be party to the contract. However, this does not preclude the team from being involved in determination of the scope of the audit and review of the audit.

Companies should be required to use Requests For Proposals (RFP) to choose auditors to complete the audits required by Section 272. The RFP process will benefit the ratepayers by creating a more competitive decision process while still allowing the companies to choose their own auditors to complete the required audits.

An RFP should include:

- The purpose and the scope of the audit, i.e., to verify compliance with structural and transitional separation requirements as well as anti-discrimination requirements, etc., as required in Section 272;

- A provision for disclosure of the nature and timing of any recent work done for the company or any of its affiliates. Depending upon the type of services performed, the auditor should not be considered for selection in this audit engagement. For example, if the bidder or his/her affiliate was instrumental in designing any of the systems that will be under review in the audit, there may be a conflict of interest in retaining that firm to provide the audit services.
- Auditor selection criteria, with emphasis on the proposed work plan and previous experience of proposed personnel in evaluating affiliate relationships/cost allocations in the telecommunications industry;
- Project controls, including progress reports and a work paper trail with respect to interviews conducted, data collected, auditor analysis, etc.;
- Content of the draft and final reports with requirements for prioritization and quantification of recommendations;
- Provision of company written comments to both the draft and final reports; and
- Provision for protection of proprietary data, by the selected auditor, for which they may have access to during the audit.
- Upon completion of an audit, provision for retention of all workpapers on company premises or guaranteed access to workpapers if they remain in the auditor's custody.

The Team should become involved in the audit process before the auditor is chosen. The Team should develop a set of standards or objectives which must be met in all audits. These audit standards or objectives should be developed to compliment those that may be established by the FCC. In turn, these standards and objectives should be incorporated into the RFP. We recommend that the Team become involved at this level so that when an auditor is chosen, that auditor is very much aware of the responsibilities involved in completing the audit. Knowing what is expected from all involved will help facilitate cooperation between the independent auditor and the Team.

The Team should obtain and perform a brief review of the RFP and contract prior to company proposal solicitation. The objective of this review would be to determine if the documents generally meet the guidelines set out above. After tentative selection of a proposal by the company, the Team should obtain and briefly review that proposal for general conformance to the RFP requirements with an emphasis on the proposed work plan and audit techniques to be used.

A designated Team audit staff member should be assigned to be responsible for following the progress of the audit and to act as liaison between the Team, the auditor and the company. This individual should handle all correspondence between the Team and the auditor or company. The individual will also have the responsibility for monitoring whether deadlines will be met and whether objectives are being met. There may be, however, depending on the size of an audit, more than one auditor assigned to follow and monitor an audit.

Specific areas of Team involvement during the audit should be as follows:

- The company should notify the Team of the start of the audit. The assigned members of the Team audit staff should be in attendance at the kick-off meeting to gain an overall perspective on how the project is to be carried out in the field and the administrative procedures established to control it.
- The company or the independent auditor should forward any detailed or revised work plans to the Team audit staff for review and comments, if any.
- The company should forward all periodic progress reports prepared by the auditor to the audit staff for review and comments, if any.
- The company should forward draft report(s) and any company written comments to the Team audit staff for their review and comments. Also, changes to the draft should be supported by written comments from the companies.
- The Team audit staff assigned should obtain and review audit work papers as necessary to determine if they meet professional standards and provide adequate support for findings and conclusions reached by the auditor.
- The Team audit staff should have the option of attending and therefore receive notice of any meetings held between the auditor and the company where audit procedures or findings are discussed.

Upon completion of the audit, but prior to issuance of the independent auditor's opinion as to compliance with Section 272, the Team should verify that the program objectives were met. An additional benefit of utilizing the RFP process will be that the auditor is contractually obligated to fulfill all scope requirements, therefore, it will be more likely that the specified items will be completed. However, if all were not met, or if the Team determined that additional inquiry is necessary, the auditor should be required to meet the objectives and make the additional inquiry or be required to show why it cannot. The Team should be able to issue a Team comment, if the Team so desires, regarding the audit process.

The final non-proprietary report and company response, including plans to implement any recommendations, should be submitted to the Team for dissemination to the FCC and the appropriate State commissions. In addition, only the non-proprietary report should be made public to interested parties, with copies provided. Finally, the company should submit an implementation progress report to the Team audit staff approximately six months prior to the next audit. To help improve the effectiveness and efficiency of future audits, the Team should consider how the final report, the interested party comments and the implementation progress report impact the scope of the next audit.

III. AREAS OF GENERAL CLARIFICATION AND INTERPRETATION

Point of Clarification	Interpretation/Recommendation
How should the audit fees be accounted for?	The expenses associated with the audits should be recorded on the books of the affiliates on which the audit is being performed.
What does the phrase "shall maintain books, records, and accounts in the manner prescribed by the Commission" mean as stated in Section 272(b)(2)? Should the FCC issue specific requirements for the recordkeeping of books and records by the affiliate?	In order to facilitate more timely and accurate analysis of company records and activities, the affiliated company should be required to follow the same system of accounts as the companies which are subject to Section 272 or be able to provide the independent auditor and the Team audit staff with a document which cross-references the accounts of the company with those of the affiliate. The records of both the company and the affiliate should be readily comparable to facilitate review.
How is the auditor to assure compliance with the separate accounting requirements in Section 272(b)?	<p>Operation requirements for the affiliate are stated in Section 272(b). In order to assure compliance, the auditor must plan and perform the audit to provide him or herself with a sufficient level of knowledge to determine:</p> <ul style="list-style-type: none"> ● whether the affiliate has maintained separate books, records, and accounts than those of the company; ● whether the affiliate has separate officers and directors, and that no employees are shared by the affiliate and the company; ● what sort of financing the affiliate has obtained and the type and ownership of the affiliates stock; and ● the nature and amounts for any transactions between the affiliate and the company.

Point of Clarification	Interpretation/Recommendation
Should Team members Team audit staff members or other commission staff members be reimbursed for travel expense incurred in connection with the requirements of Section 272?	The companies should reimburse Team members, Team audit staff members and Federal and State commission staff members for reasonable travel expenses that are directly related to a Section 272 audits.
How is the auditor to assure compliance with the other requirements of Section 272?	<p>The auditor should:</p> <ul style="list-style-type: none"> ● determine that all services, as required under this Section, are being provided by a separate affiliate, as required by Section 272(a)(2); ● establish procedures to assure that discrimination with affiliates and nonaffiliates is not occurring, as required by Section 272(c)(1); ● determine whether all transactions with an affiliate are accounted for in accordance with accounting principles designated or approved by the FCC, as required by Section 272(c)(2). The principles are those prescribed in the specific company's Cost Allocation Manual and in 47 CFR §32.27-Transactions With Affiliates; and ● determine that the company and its affiliate are in compliance with Section 272,(e)(1),(2)&(3) and Section 272(g).

Point of Clarification	Interpretation/Recommendation
<p data-bbox="236 761 830 895">What working papers will the Team have access to? Should it only have access to the current audit working papers or any previous audit working papers?</p>	<p data-bbox="863 761 1452 783">Section 272(d)(3)(B) gives the FCC and the</p> <p data-bbox="863 789 1452 1157">State commissions "access to the working papers and supporting materials of any auditor who performs an audit under this section." Access should be given to all years working papers with no restriction or time limit placed upon access to prior years papers. The Team may need access to prior workpapers to review previous findings and areas of concern already addressed by the auditor, etc.</p> <p data-bbox="863 1204 1452 1613">State and Federal access to the workpapers should not be limited either. If a regulatory body determines that inspection of the documents is necessary, they should have full access to the workpapers. Even the workpapers of companies regulated under the price cap methodology should be accessible, as it is these jurisdictions that must continue to safeguard that non-competitive services are not subsidizing their competitive services.</p>

Point of Clarification How should the interested parties gain access	Interpretation/Recommendation Workpapers should remain in the custody of
<p>to the auditor's workpapers?</p>	<p>the company or its auditor with full access guaranteed and granted only to the State commissions, the FCC and the Team. If review of the workpapers is determined to be necessary, the interested body should send a representative to review the documents at the company's offices.</p> <p>When a need to review the papers has been identified, the lead auditor should send a request to the custodian of the papers requesting an on site visit. The auditor or company should have 7 days to respond to the request by either setting up a date for a visit to be held within 14 days from that point or by stating why a visit cannot begin in that time frame.</p> <p>Parties with access to the workpapers should be allowed to make necessary copies or notes of all non-proprietary information. All proprietary information should be held subject to review only; however, if a copy is requested, the copy should be placed in the custody of the requesting body, either a State commission, the FCC or the Team, and should be maintained under their guidelines for handling of proprietary information. Team auditors should abide by the rules set out by their Commission.</p>
<p>When should the "every two years" clock begin?</p>	<p>An audit should be performed and submitted for the first full fiscal year of operations after the new subsidiary begins provision of services (is incorporated or some other threshold) and every second year thereafter.</p>

Point of Clarification How many audits are due every two years?	Interpretation/Recommendation One audit should be performed and results
One per subsidiary, one for all subsidiaries providing a particular type of service, or one for all subsidiaries for all types of services?	submitted for each type of service. It is possible that not all audits for a particular company would be submitted in the same year. As discussed earlier, we believe that the clock begins when the first affiliate begins provision of a service listed in Section 272. Therefore, at maximum, there should be three audit reports submitted per company in a given year. One RFP may be used to solicit bids for all three audits.
Should the companies be segmented by regions, States or not at all for the purpose of completing an audit?	The companies should not be segmented. The audit requirement should be imposed at the parent company level, taking a top-down, comprehensive approach.
How far down the company organization chart should the scope of audits extend? Should audits be required of only direct subsidiaries or of any affiliate of the company or its subsidiaries?	The audit should encompass all affiliates, of the company or its subsidiary, that provide any of the three types of services.
Should audits be required of affiliates that resell the specified services?	Audits should be required of all affiliates whose activities, in any way, involve or whose revenues are derived from the services specified in Section 272.
To whom should the completed audits be submitted?	Section 272(d)(2) states that the auditor "shall submit the results of the audit to the Commission (FCC) and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection." We believe that all audit reports should be submitted to the Team directly for dissemination to the appropriate State commissions, the FCC or interested parties.

<p>Point of Clarification What should be the due date of the completed audits? How should requests for extensions be handled?</p>	<p>Interpretation/Recommendation The FCC should prescribe that the audit</p>
	<p>reports should be due, no later than 90 days following the close of the fiscal year for each company. Such a due date is reasonable if a significant portion of the audit field work is performed during the period being audited.</p> <p>The FCC should also prescribe that requests for extensions be directed to the Commission, and should be received no later than 14 days prior to the due date of the audit. The FCC should forward courtesy copies of the request to the appropriate State commissions. FCC approval or denial of a company's request should be given within 14 days.</p> <p>Absent FCC interpretation, these provisions should be included in each RFP.</p>
<p>How should comments to the final audit report be handled? Should a comment period be established for the report? Who should receive copies of the comments?</p>	<p>All comments should be submitted to the Team for review and dissemination to the appropriate State commission and the FCC. A 30 day comment filing period is appropriate for the commissions and other parties.</p>
<p>How should issues of non-compliance identified during the audit or by a commentor be handled? Should the Team have authority or responsibility to initiate activity or to coordinate action?</p>	<p>The Team should have the responsibility of notifying the FCC or appropriate State commission of any findings. This can be accomplished through simply providing a copy of the report to the appropriate commission. Any action that may be necessary should be taken by the FCC or a State commission.</p>
<p>Should companies have an opportunity to respond to comments by parties to the audit findings? If so, how long?</p>	<p>Yes. Companies should have an opportunity to make reply comments. Company comments should be due 30 days after the due date of the parties' comments.</p>

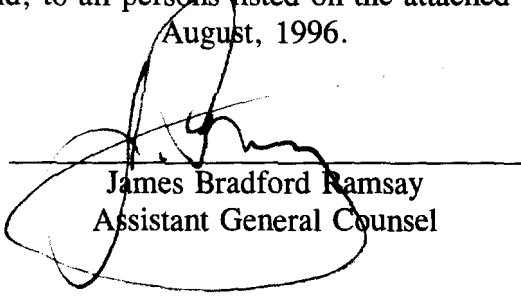
Point of Clarification How should proprietary information be handled?	Interpretation/Recommendation Each State commission and the FCC should
	<p>be required to comply with its own rules regarding the handling of proprietary information if it wishes to review such data. In addition, each Team and Team audit staff member should be required to comply with the rules of their State commission when reviewing proprietary data. Therefore, each State commission who wishes to have representation on the Team or the Team audit staff should be in compliance with the statutory requirements shown in Section 272(d)(3)(C) that says "the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted under this section."</p> <p>Such a requirement of Team or Team audit staff membership should be in place so as to increase the effectiveness of the Team's oversight. If there were certain Team or audit staff members who's State did not have adequate safeguards in place to ensure the protection of proprietary information, that member would not have access to any proprietary information provided during the audit. Therefore, that member could not contribute to the complete performance of the Team's duties.</p>
What time frame should an audit cover? Should it cover the two years of operations since the last audit or just one fiscal year?	Section 272(d)(1), states that a company shall obtain an audit "every 2 years." We believe that each audit should be comprehensive and that the opinion issued should include assessment of activities occurring since the last audit.

IV. AREAS REQUIRING FCC ACTION

Concern	Recommendation
Will the FCC seek to extend the sunset period beyond the 3- and 4-years specified in Section 272(f)(1)&(2)?	<p>The FCC should seek to extend the period for a particular service if:</p> <ul style="list-style-type: none">● the 3- or 4-year period has passed and no audit has been completed for that particular type of service; or● an audit has been completed, for that service, within the last 2 years and there were issues of non-compliance that were identified as a result of the audit; or● there has not been an audit completed, for that type of service, within the last 2 years; or● there does not appear to be effective competition for the specific service in the affiliates territory.
What will the procedure be on the Federal level, if areas of non-compliance are identified as a result of the audit?	Companies should submit a copy of any plans they have to implement any auditor recommendations or to correct any items the auditor may find.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document have been served by first class United States mail, postage prepaid, to all persons listed on the attached service list this 15th day of August, 1996.



James Bradford Ramsay
Assistant General Counsel